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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,303	11/25/2003	Rajesh Pendekanti	ETH 5102 (16032)	7062

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EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/721,303

Applicant(s)

PENDEKANTI ET AL.

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-22 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 9, 11-20 and 25-29 is/are allowed.
- 6) ☐ Claim(s) 1-3, 6, 7, 21, 22 and 24 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Formal Matters

Claims 1-9, 11-22 and 24-29 are currently pending. The examiner has found new grounds of rejection for previously allowable claims, therefore, the finality of the prior Office action is withdrawn and this Office action is non-final.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-7, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsuruta et al. (5,389,098).

Regarding claims 1, 2, 4, 6 and 7, Tsuruta et al. disclose an electrosurgical stapler with the actuation mechanism comprising:

a handle assembly (figure 1, # 1) including at least a first user-operable portion;

an elongated body (2) extending distally from the handle assembly;

a first actuation member (6) carried within the elongated body and extending to a distal end of the elongated body for causing clamping of the jaws;

wherein the first actuation member is moveable in response to movement of the first user-operable portion;

an electrical supply line (33 and 31) extending from the handle assembly to the distal end of the elongated body; and

a coupling at the distal end of the elongated body (Figure 2-6) for releasably coupling the elongated body in turn to a clamping head and an electrically-energizable head (a quick connect/quick release coupling);

wherein, when the elongated body is coupled to the clamping head, the first actuation member controls clamping of the clamping head, and when the elongated body is coupled to the electrically-energizable head (powered by an RF generator and capable of ablating tissue), the electrical supply line electrically energizes the electrically-energizable head (col.7, line 25-col. 8, line 51 and col. 10, line 7-65, col. 13, line 57-col. 14, line 32 and col. 19, lines 5-40).

Further to claim 3, Tsuruta et al. disclose a second actuation member (7) with connecting parts which controls the firing of the staples.

Regarding claims 21 and 22, Tsuruta et al. disclose a stapler head, comprising:

a first jaw including an anvil (4);

a second jaw operatively associated with the first jaw, opposing the first jaw and including a staple driving mechanism (3);

an actuation mechanism (6 and connected parts) associated with movement of the first and second jaws, a distal end of said actuation mechanism releasably coupling to a proximal end of the stapler head whereat at least the second jaw thereof is carried; and

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a staple holder including a staple supply; wherein the staple holder is removably receivable by the second jaw; the staple supply is actuatable by the staple driving mechanism when the staple holder is received by the second jaw; and

a first actuation member (6) responsive to an actuation mechanism for causing a clamping movement of the first and second jaws; and

a second actuation member (7) responsive to the actuation mechanism for controlling the staple driving mechanism to fire the staples (col. 7, line 25-col. 8, line 30).

Note: the claimed concept of "releasably coupling" and "quick connect/quick release" coupling are being broadly interpreted by the examiner and is consistent with court cases in the past, wherein even a pin or related element can be considered as such.

Claims 21, 22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Mastri et al. (6,032,849). Mastri et al. disclose all elements of the claims (see Figures 1 and 4-6) where the quick disconnect is best seen in Figures 4 and 5 and described in col. 9, line 25-col. 11, line 34 and the other elements are best seen in Figures 7 and 10 described in col. 13, line 48-col. 14, line 53.

Allowable Subject Matter

Claims 8, 9, 11-20 and 25-29 are allowed.

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Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

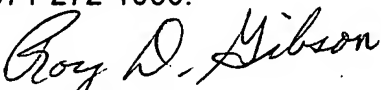
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Viola et al. (5,954,259); Viola (5,439,155); and Green et al. (4,566,620).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Roy D. Gibson
Primary Examiner
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February 22, 2007